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BIBHUTI PRASAD

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Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT:JABALPUR

Criminal Appeal No. 434 /1993.

APPELLANT : Tarsisius @ Darji S/o Sukra
(IN JAIL ) Aged-45years,
R/o Village- Chatakpur, Distt.Raigarh. (MP)

VERSUS

RESPONDENT : The State of M.P. through-P.S.Narainpur,

CRIMINAL APPEAL U/S 374(2) OF THE CODE OF CRIMINAL PROCEDURE :

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr.A.R. (27)

# आदेश पत्रक

मामला क्रमांक Cr.A.No.434/93 सन् ~~200~~

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ**

**CRIMINAL APPEAL NO.434 of 1993**

**Appellant : Tarsisiyush**

**Vs.**

**Respondent : State of Madhya Pradesh**

Ms. Sharmila Singhai, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, learned Panel Lawyer for the respondent/State.

**ORAL JUDGMENT**
**( 08.02.2006)**

**L.C.Bhadoo, J**

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has challenged the legality and correctness of the judgment of conviction and order of sentence dated 21.04.1993 passed in Session Trial No. 111/92 whereby the learned Additional Sessions Judge, Jashpurnagar after holding the accused/appellant guilty for commission of murder of Norbetiyus convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

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| 2.. | Case of the prosecution is that on 7.3.1992 at about 11 a.m. accused Tarsisyus attacked his brother Norbetyus on the instigation of Rejina, wife of the accused with axe on head and temporal region, as a result of which he died spontaneously. Quarrel was witnessed by Alwis when he was coming from the agricultural field. He informed his brother Jonus about the same. Thereafter villagers came on the scene and the matter was reported by Deonis in police station Narayanpur under P-1. After registering the case P-1 under Section 302 of the IPC the Investigating Officer left for the scene of occurrence. While in police custody accused gave memorandum P-2 regarding the place where he kept the axe i.e. weapon of the offence and in pursuance of that memorandum the axe was recovered under P-3. Plain soil and blood stained soil was taken into possession under P-4. Blood stained clothes of the accused, under garments and one Lungi were taken into possession under P-5. After giving notice to the panchas, panchnama of the body of Norbetyus P-6 was prepared. Site plan P-8 was also prepared. Body of Norbetyus was sent for post mortem examination to Primary Health Centre, Kunkuri where Dr. S.Toppo P.W.-10 conducted the post mortem and prepared the post mortem report P-12 in which he opined that the cause of death was hemorrhage due to fracture of skull which led to excessive bleeding and death was homicidal in nature. After completion of the investigation the charge sheet was filed against the accused/appellant and co-accused Rejina, wife of the accused/appellant in the Court of JMFC, Jashpurnagar who in turn committed the case to the Sessions Judge, Raigarh from | |

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where the learned Additional Sessions Judge, Jashpurnagar, District Raigarh received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused persons examined fifteen witnesses. Statements of the accused persons were also recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them and stated that they are innocent and have been falsely implicated in the crime.

4. Learned Additional Sessions Judge after hearing the arguments of the Public Prosecutor and counsel for the accused persons convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment. However co-accused Rejina, wife of the accused/appellant was acquitted of the charge of Section 109/302 of the IPC.

5 We have heard learned counsel for the parties and perused the evidence available on record.

6 Homicidal death of Norbetiyus is not in dispute.

7 As far as involvement of the accused/appellant in the crime in question is concerned, P.W.-13 Alwis Tirkey is the eye witness who has stated that on 07.03.92 he was returning from the agricultural field and when Norbetyus reached the house of Tarsisyus, Tarsisyus attacked him with axe on his temporal region as a result of which Norbetyus fell down on the ground, on which Rejina said "attack Norbetyus once more", on which Tarsisyus again attacked Norbetyus with axe and thereafter Tarsisyus pressed the

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neck by putting his leg and Rejina sat on the chest of Norbetyus. He informed his brother about the incident. Thereafter villagers came to the scene and saw the injuries on Norbetyus and report was lodged at police station Narayanpur. P.W.-4 Sukhcharan has stated in his evidence that on the fateful day when he was peeling the Bamboo he heard the noise of quarrel between Tarsisyus, Rejina and Norbetyus, thereafter calm prevailed. P.W.-10 Dr. S. Toppo has stated that on 08.03.92 he conducted the post mortem examination on the body of Norbetyus and found that there was an incised wound on the left side of head in the size of 1x1/2x/1/2" in spindle shape as a result of which occipital bone was fractured and clotted blood was present and brain material was coming out. Second injury was on the left side of the face spindle in shape in the size of 1x1/2x1/2" and Maxllery bone was fractured, haemotoma below the wound and there was swelling and contusion over right side of face just over the neck of mandible and there was haemotoma. Injuries were homicidal in nature. Report is P-12. On 25.03.92 he examined the axe and gave the report. Injuries which were found on the body of the deceased could be caused by axe and report is P-13. In the cross examination he stated that blade of the axe was 4.5 c.m. in length which was more than 1 ½ " and less than 2 ".

8 Learned counsel for the appellant argued that as witness P.W.13 Alwis Tirkey has stated that accused pressed the neck by putting leg, but no corresponding injury was found, therefore evidence of this witness is not reliable. Looking to the evidence of this witness even if no injury was

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| | noticed on the neck, the evidence of this witness cannot be rejected solely on this ground because he has clearly stated that accused assaulted the deceased with axe on the head and corresponding injuries were found on the face and head of the deceased and moreover those injuries stand corroborated by the medical evidence. Learned counsel further attacked the evidence of this witness on the ground that conduct of this witness was such that he had not disclosed the factum of witnessing of crime to anyone except his brother, but the fact remains that he informed his brother Jonus and by not informing other persons his evidence cannot be disbelieved because it depends upon person to person how one conducts or behaves in particular circumstances. Moreover the incident took place in day light and there is nothing in the cross examination of this witness that this witness had any animosity against the accused to depose against him and implicate him in a false case. Moreover quarrel was between brothers, therefore there was no reason for this witness to implicate the accused/appellant in a false case. | |
| 9 | Therefore in view of the evidence of P.W.-13 Alwis Tirkey, medical evidence and also evidence of P.W.-4 Sukhcharan, we are convinced that the accused was the author of the crime in question and to this extent we do not find any illegality or infirmity in the judgment of the trial Court. | |
| 10 | Learned counsel for the accused/appellant relying on the decision of the Apex Court in the matter of **Prakash Chand Vs. State of Himachal Pradesh** reported in **AIR 2004 SCW 4650** argued that from the evidence | |

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| | the prosecution has not been able to show that the accused assaulted the deceased with intention to cause his death, therefore the offence alleged against the accused/appellant does not travel beyond 304-II of the IPC. | |
| 11 | In the same judgment in paragraph 8 it has been held that though the distance is always not determinative about the intention or knowledge of the accused, the factual background has to be considered taking into account nature of injuries sustained, the weapon used and such other relevant factors. In that case there was quarrel between two brothers on petty matter that the dog of one brother entered the house of another brother on which the other brother asked the accused as to why he did not tie his dog that enraged the accused, he brought gun from his house and fired from the distance of 35 ft. The Court held that the shot was fired from the distance of 35 ft. and pellet hit the deceased therefore it cannot be said that there was intention to cause death. In the matter of **Virsa Singh Vs. State of Punjab** reported in **AIR 1958 SC 465** the Apex Court held that under Clause Thirdly of Section 300, IPC culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. | |
| 12 | It must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death viz. that the injury found to be present was the injury that was intended to | |

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| | be inflicted. For cases to fall within clause. Thirdly it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Therefore in order to prove the offence in Clause III of Section 300 the intention is the main measure to assess the fact whether the accused while inflicting the bodily injuries was intending to cause death of the deceased and in order to ascertain the intention the determinative factors to be taken into consideration are the nature of weapon used, size of the weapon and the place where the assault was made and factual background of the crime. | |
| 13 | In the matter of **State of Andhra Pradesh Vs. Rayavarapu Punnayya** reported in **(1976) SCC 382** the Court held that the bodily injury includes the plural so that even if none of the injuries individually were fatal but were cumulatively so, the case falls under this clause. | |
| 14 | In the light of above principle if we look into the evidence available in the present case it is clear that at the first instance the accused used the deadly weapon i.e. axe, assaulted once on the head as a result of which deceased fell down but that did not stop the accused from assaulting further. He again assaulted twice and resultantly the occipital bone was fractured and brain material started coming out. The second injury with the same axe was caused on the left side of the face as a result of which Maxillary bone was fractured and again the third injury caused on the right side of the face and as a result of which the mandible bone was also | |

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| | fractured, therefore almost all the bones of face and head were fractured and the deceased died spontaneously. Thus as the injuries were caused with deadly weapon that too repeatedly, it becomes clear that there was intention on the part of the accused/appellant to cause injury on the vital part of the body of the deceased which were sufficient to cause death in the ordinary course of nature. Therefore, in this background we are of the considered opinion that the arguments advanced by counsel for the appellant is of no help to the accused and the trial Court has rightly held the accused guilty for the commission of an offence under Section 302 of the IPC. | |
| 15 | In view of the above we do not find any illegality or infirmity in the judgment of the trial Court and there is no force in the appeal and therefore, the same is liable to be dismissed. It is accordingly dismissed. | |
| | Sd/-<br>L.C. Bhadoo<br>Judge | Sd/-<br>Dhirendra Mishra<br>Judge |

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